

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

IN RE: SUZY MARTIN and)
 JAMES HERNANDEZ) OEIG Case #15-02081

OEIG FINAL REPORT (REDACTED)

Below is a final summary report from an Executive Inspector General. The General Assembly has directed the Executive Ethics Commission (Commission) to redact information from this report that may reveal the identity of witnesses, complainants or informants and “any other information it believes should not be made public.” 5 ILCS 430/20-52(b).

The Commission exercises this responsibility with great caution and with the goal of balancing the sometimes-competing interests of increasing transparency and operating with fairness to the accused. In order to balance these interests, the Commission may redact certain information contained in this report. The redactions are made with the understanding that the subject or subjects of the investigation have had no opportunity to rebut the report’s factual allegations or legal conclusions before the Commission.

The Commission received this report from the Governor’s Office of Executive Inspector General (“OEIG”) and a response from the agency in this matter. The Commission, pursuant to 5 ILCS 430/20-52, redacted the final report and mailed copies of the redacted version and responses to the Attorney General, the Executive Inspector General for the Governor, and to Suzy Martin and James Hernandez at their last known addresses.

The Commission reviewed all suggestions received and makes this document available pursuant to 5 ILCS 430/20-52.

FINAL REPORT

I. INTRODUCTION AND ALLEGATIONS

On October 16, 2015, the Office of Executive Inspector General (OEIG) received a complaint from the University of Illinois at Chicago’s (UIC) Executive Director of University Ethics and Compliance, Donna McNeely, alleging potential improprieties relating to UIC elevator repair and maintenance services.¹ Specifically, the complaint questioned the relationship that UIC Lead Elevator Mechanic James Hernandez may have had with Smart Elevators Co. (Smart Elevators), since the amount of work Smart Elevators did for UIC had significantly increased, taking over work that university staff mechanics traditionally performed, at the direction of Mr. Hernandez. In addition, the complaint alleged that:

¹ In April 2016, Ms. McNeely consented to being identified as the individual who reported possible misconduct to the OEIG regarding this matter. See 5 ILCS 430/20-90(a).

- Smart Elevators may not be performing the services for which it was paid;
- Mr. Hernandez did not follow proper procurement procedures when employing the services of Smart Elevators, as well as for payment of those services;
- UIC's procurement and payment systems centralized all control for elevator services with one individual, Mr. Hernandez, which allowed the potential misconduct to take place; and
- Mr. Hernandez may have been abusing work time by not being at UIC during the work day.²

Based on its investigation, the OEIG concluded that Mr. Hernandez and the owner of Smart Elevators, Suzy Martin, operated a kickback scheme in which Ms. Martin paid Mr. Hernandez at least \$83,530 in kickbacks, and likely as much as \$199,430. In addition, Mr. Hernandez and Ms. Martin violated the gift ban provision of the State Officials and Employees Ethics Act, and Mr. Hernandez violated UIC's Conflicts of Interest Policy based on his financial gain.

II. BACKGROUND

A. James Hernandez

James Hernandez began working at UIC in 1991 as an elevator mechanic. He was the lead elevator mechanic in the elevator repair and maintenance shop at UIC from 2008 until March 2016. As the lead elevator mechanic, Mr. Hernandez was responsible for supervising the maintenance and repair of all of the elevators and escalators on the UIC campus. In this role, Mr. Hernandez authorized expenses necessary to repair and maintain the elevators, including costs of materials, overtime, and the hiring of outside vendors.

As part of his duties, Mr. Hernandez also supervised four full-time elevator mechanics employed at UIC. Mr. Hernandez reported to [Employee 1].

In February and March 2016, UIC sent Mr. Hernandez documentation informing him that they intended to discharge him for time abuse, document falsification, and negatively impacting the department's budget and operations, among other things. On March 17, 2016, UIC accepted Mr. Hernandez's resignation in lieu of termination.

B. Suzy Martin And Smart Elevators

Suzy Martin is the founder and president of Smart Elevators, a licensed elevator repair and maintenance business operated out of Willowbrook, Illinois. Smart Elevators is certified as a

² Early on in this investigation, the OEIG learned that UIC had done an extensive investigation regarding this particular allegation and concluded that Mr. Hernandez was in fact abusing work time and falsifying his time records. UIC subsequently began proceedings to terminate him for this misconduct. During the pendency of the termination proceedings, Mr. Hernandez resigned from UIC. Because UIC investigated this matter and Mr. Hernandez left UIC, the OEIG did not investigate this allegation further.

Women's Business Enterprise. Smart Elevators has been providing elevator repair and maintenance services to UIC since 2011.

III. INVESTIGATION

A. UIC's Internal Audit/Investigation Of Elevator Repair Services

On January 5, 2016, and March 22, 2017, the OEIG interviewed UIC [Employee 2], who performs audits and internal investigations as part of his duties. [Employee 2] stated that in August 2014, an investigation was opened in response to unusual elevator maintenance and repair allegations reported by UIC elevator mechanics. [Employee 2] said that UIC also retained the firm of Grant Thornton to assist in the investigation, but eventually in the fall of 2015 decided to refer this matter to the OEIG. The allegations UIC mechanics originally brought to the attention of UIC included the following:

- UIC mechanics were not given enough work to do and were instructed by Mr. Hernandez to look busy while Smart Elevators employees performed repair work;
- Elevator inspections were not being done;
- Smart Elevators employees obtained master keys to UIC buildings from Mr. Hernandez; and
- Mr. Hernandez submitted false time records.

According to [Employee 2], there were four licensed elevator mechanics who reported to Mr. Hernandez but that many years ago, UIC had fourteen licensed elevator mechanics on staff. [Employee 2] stated that when elevator mechanics left in the past, UIC did not replace them.

[Employee 2] said that Mr. Hernandez used UIC's purchase order process to pay for elevator repairs and maintenance, but that elevator repair and maintenance work should have been performed under a UIC contract. [Employee 2] said he could not explain why contract procedures were not implemented for all elevator repair and maintenance services.³

According to [Employee 2], he accessed UIC's data system to determine how much UIC was paying particular outside vendors for elevator repair services. According to [Employee 2's] summary, UIC paid the following to Smart Elevators for the following fiscal years:

2011	\$ 62,720
2012	767,332
2013	1,608,727
2014	1,794,099

³ [Employee 2] stated that contract procedures were used in a few instances in which an elevator company installed new elevators in a building, and repairs were covered under the contract during a warranty period.

2015	<u>1,165,515</u>
Total	\$ 5,398,393

[Employee 2] also determined that in fiscal year 2014, UIC spent approximately \$2.5 million for elevator repair/service conducted by outside vendors and another \$732,522 to employ four in-house mechanics. [Employee 2's] compilation of the data, showed that for the same fiscal year, the University of Illinois at Urbana-Champaign campus, which is approximately the same size as UIC's campus, only spent approximately \$1 million on elevator repair/service, which included seven in-house mechanics and approximately \$200,000 for outsourced labor and parts.

As part of UIC's internal investigation, two in-house elevator mechanics were interviewed in July 2015. Mechanic 1 said that since 2012, Mr. Hernandez, his supervisor, had given him little or no work to do. He said that he and the other three mechanics sat idle, watching movies all day, while Mr. Hernandez handed out work to outside contractors, including Smart Elevators. Mechanic 2 also said that he was idle; every job was handed out to contractors. He said that there were five Smart Elevators employees at UIC every day. Mechanic 2 said that although he did not see the Smart Elevators employees from where he was located, he recognized the Smart Elevators employees' cars parked on campus.

B. Interview Of Smart Elevators Owner Suzy Martin

On February 1, 2016, the OEIG interviewed the owner of Smart Elevators, Suzy Martin. Ms. Martin stated that she became involved with the elevator business in 2006 when she worked for her brother's elevator company, and she started Smart Elevators in 2009. According to Ms. Martin, she attended a Women's Business Enterprise open house at UIC, where she met UIC employees that led to her eventual meeting with Mr. Hernandez. Ms. Martin said that she only received a small portion of the UIC elevator repair business in the beginning but that it then grew.

Ms. Martin acknowledged that her gross receipts from UIC work increased from approximately \$62,000 to over \$1.7 million annually. Ms. Martin said that this increase was due to her lower prices, and reliable employees with a good work ethic. Ms. Martin said that Mr. Hernandez was not employed by Smart Elevators,⁴ he did not have a role in Smart Elevators, and she never socialized with Mr. Hernandez. Ms. Martin stated that, through conversations with Mr. Hernandez, she was aware that he had children and owned a boat. Ms. Martin denied ever giving a bribe, kickback, or gift to any of her customers, including Mr. Hernandez, or to any UIC personnel.

C. OEIG Review Of Financial Records

In an attempt to determine whether any money had been exchanged between Mr. Hernandez and Ms. Martin, OEIG investigators identified a checking account belonging to Mr. Hernandez at Credit Union One and obtained the statements of that account.

⁴ UIC's investigation found a LinkedIn page in the name of James Hernandez that listed "Management at Smart Elevators Co." under experience. Ms. Martin said she knew about this "false" LinkedIn page and that Mr. Hernandez told her that he did not make this page and did not know who did. Ms. Martin said she contacted LinkedIn and told them this was a false page.

1. Credit Union One

The bank statements from this Credit Union One (Credit Union) account show that UIC directly deposited Mr. Hernandez's regular paycheck into the account, and regular withdrawals were made from the account for expenditures such as gas, restaurant meals, and travel.

The account records did not show any unusual deposits or withdrawals. However, the OEIG identified a boat loan that Mr. Hernandez obtained from Credit Union in June 2015 in the amount of \$16,028.47. Credit Union records show that just over one month after it loaned Mr. Hernandez the funds for the boat, he paid the loan in full with a cashier's check in the amount of \$16,313.94 drawn from JPMorgan Chase (Chase). The OEIG then subpoenaed records from Chase for any accounts Mr. Hernandez may have held there, for the period January 1, 2012 through August 31, 2015. As discussed below, Chase produced records for several accounts, including the Chase bank account that was used to pay off Mr. Hernandez's boat loan.

2. JPMorgan Chase

The statements received from Chase show that an account, designated as a "Chase College Checking" account, was initially held under the name of [Daughter], with addresses in Escondido and San Diego, California. The OEIG learned from a law enforcement interview that [Daughter] is Mr. Hernandez's daughter. From January 2012 through March 2013, [Daughter] was nineteen and twenty years old.

Account statements from January 2012 until March 2013 show [Daughter] as the sole owner of this account and show low balances, under \$1,000.00. The largest deposit was \$481.00. The ATM and debit card withdrawals during that time show withdrawals made mostly in and around Escondido and San Diego, California, for purchases at such places as Panera Bread, Walgreens, and Taco Bell.

Beginning with a statement in March 2013, Mr. Hernandez's name was added onto bank accounts in addition to his daughter.⁵ In that March 2013 statement, OEIG investigators identified the beginning of large, even-dollar amounts deposited to Mr. Hernandez's joint Chase accounts. These large-dollar deposits continued through at least August 2015,⁶ totaling \$198,830. The deposits are as follows:

⁵ An individual Chase savings account was also opened in [Daughter's] name on September 19, 2013, at a Chase branch in Crown Point, Indiana. Mr. Hernandez was added as a joint owner of the savings account on October 9, 2013. Beginning with the statement dated September 19, 2013 through October, 15, 2013, the statements show a Crown Point, Indiana address. Mr. Hernandez listed this Crown Point address as his address in paperwork submitted to UIC in 1996.

⁶ As noted above, the OEIG obtained bank records through August 31, 2015.

<u>2013</u>	<u>2014</u>	<u>2015</u>
*14,300.00	5,000.00	*6,000.00 ⁷
6,600.00	*6,300.00	5,500.00
*6,600.00	*6,000.00	6,000.00
*17,030.00	7,300.00	6,000.00
6,300.00	6,600.00	6,100.00
9,600.00	7,000.00	5,000.00
*6,600.00	2,000.00	5,000.00
*6,900.00	2,000.00	<u>5,500.00</u>
<u>5,400.00</u>	6,300.00	\$45,100.00
\$79,330.00	*13,200.00 ⁸	
	7,600.00	
	<u>5,100.00</u>	
	\$74,400.00	

TOTAL DEPOSITS for March 2013-August 2015: \$198,830⁹

3. Checks Written from Smart Elevators

The OEIG requested additional records for nine of these large deposits (the deposits that have an asterisk next to them) in order to determine the source of the money.¹⁰ The nine deposits were comprised of ten checks drawn on a Smart Elevators account,¹¹ all of which were made payable to [Daughter], and signed in the name of Suzy Martin. The checks are identified below:

Smart Elevators Check #	Date of Deposit	Chase Account	Amount of Check
1161	3/30/2013	Checking	\$ 14,300
1182	5/11/2013	Checking	6,600
1215	7/13/2013	Checking	17,030
1272	10/15/2013	Checking	6,600
1290	11/13/2013	Checking	6,900
1344	2/15/2014	Savings	6,300

⁷ Investigators later discovered that this entry in the bank statement reflected a deposit of \$6,600, less \$600 received as cash back.

⁸ Investigators later discovered that this entry in the bank statement reflected a deposit of two \$6,600 checks on the same day.

⁹ This amount represents the total of the large deposits into the Chase accounts. At the time of one of the deposits (Smart Elevators check # 72010), \$600 was received in cash. Thus, the total amount of known checks from Smart Elevators and suspicious large deposits into the joint Chase accounts is \$199,430.

¹⁰ Pursuant to the Illinois Banking Act, the OEIG is required to reimburse banks for the costs incurred in responding to a subpoena for bank records. *See* 205 ILCS 5/48.1(g). In order to limit needless expenses, the OEIG decided to first get a sampling of these large deposits in order to determine the source and whether it was worth requesting the documents for all of the deposits. After receiving the sample, the OEIG referred this matter to the U.S. Attorney's Office, who requested that the OEIG suspend its investigation. Thus, although the OEIG did not obtain further bank records, these additional bank records may show checks in these deposit amounts from Smart Elevators.

¹¹ Nine of the Smart Elevators checks were drawn on PNC Bank; one was drawn on First Midwest Bank.

1353	3/8/2014	Savings	6,000
1480	10/2/2014	Savings	6,600
1481	10/2/2014	Savings	6,600
72010	1/9/2015	Savings	6,600
TOTAL			\$83,530

The checks listed above were deposited into the Chase accounts jointly held by Mr. Hernandez and [Daughter] via over-the-counter deposits. According to a Chase Document Review Specialist, records show that these deposits were coded with a particular number assigned to Chase branch locations in Mokena, Orland Park, or Tinley Park, Illinois. Thus, Chase was able to narrow the location of the deposits to one of these towns. At the time these deposits were made, the statements for Mr. Hernandez's Credit Union account listed his address as being in Tinley Park, Illinois.¹²

Chase records from Mr. Hernandez's joint accounts further indicate several occasions when Mr. Hernandez withdrew money from the Chase accounts, as detailed below:

- A withdrawal slip dated April 12, 2014 was signed in the name of "James Hernandez" for the purchase of a cashier's check in the amount of \$21,248, payable to the Internal Revenue Service. The withdrawal slip contained the handwritten notation, "RE [Daughter, different surname]," and a Social Security number that matches the Social Security number shown for [Daughter] on her Chase signature card.
- A January 9, 2015 deposit ticket for the deposit of Smart Elevators check #72010, in the amount of \$6,600, had a signature in the name of "James Hernandez" as the customer; \$600 of the \$6,600 was requested in cash on the deposit. The accompanying cash paid out record shows \$600 in cash was given out. The corresponding account statement shows that \$6,000 was deposited into the joint account on January 9, 2015, indicating that the remaining \$600 from the check was given to the customer in cash at the time of the deposit.
- A withdrawal slip dated February 2, 2015 was signed in the name of "James Hernandez" for the purchase of a cashier's check in the amount of \$4,920, payable to Adler University.¹³
- A withdrawal slip dated April 15, 2015 is signed in the name of "James Hernandez" for the amount of \$19,308. The same day, a Chase cashier's check in the amount of \$16,363 was issued, showing Mr. Hernandez as the remitter. The cashier's check was payable to the Internal Revenue Service.

¹² Mokena, Orland Park, and Tinley Park are southwest suburbs of Chicago. According to Google Maps, all are under ten miles from each other.

¹³ Adler University is located in Chicago.

- A \$16,313.94 withdrawal was made on July 17, 2015, the same date Mr. Hernandez used a Chase cashier's check for \$16,313.94 to pay off his Credit Union boat loan.¹⁴

The bank records also reflect that during the time that Smart Elevators checks were being deposited into the joint accounts at a Chase branch in Illinois, ATM and debit card withdrawals consistent with the activity before March 2013 continued in California, through September 2013. Beginning in September/October 2013, when the savings account was opened and the address on the account changed to Crown Point, Indiana, some ATM and debit card withdrawals in Crown Point, Indiana also appear on the bank records.

During a recent interview with law enforcement officials, [Daughter] acknowledged that she is the daughter of James Hernandez. [Daughter] stated that she has never worked for a company named Smart Elevators and that she did not have any knowledge of checks written to her from Smart Elevators.

D. UIC's Process For Procuring Elevator Repair Services

While the OEIG was obtaining and reviewing the financial documents, it continued to interview UIC personnel regarding the procurement process for elevator repair services. As previously discussed, UIC paid Smart Elevators over \$5 million from 2011 to 2015, on an escalating scale. The OEIG interviewed UIC [Employee 1], [Employee 3], and [Employee 4] about Mr. Hernandez's authority and ability to misappropriate UIC funds.

1. UIC Invoice Process Used by Mr. Hernandez for Elevator Repairs

The OEIG interviewed several UIC employees, including [Employee 3] and [Employee 4], regarding the procurement process in place for elevator repair services at the time Mr. Hernandez was at UIC. Those interviewed described the procurement process as follows:

A service request to repair an elevator could be made by a building manager, a foreman, or a call to the facilities service desk. The service request was entered into the Computer Maintenance Management System, which created a Work Order number. As the lead elevator mechanic, Mr. Hernandez determined whether the request in the Work Order was valid. If he determined it was valid, the Work Order was then transmitted to UIC's Purchasing, Procurement and Material Distribution Section (Purchasing Section).

The Purchasing Section assigned the Work Order a Purchase Request, which was sent to Mr. Hernandez's supervisor, [Employee 1], for his approval. If [Employee 1] approved the Purchase Request, the Purchasing Section assigned a Purchase Order number that was transmitted to the outside vendor. Upon the completion of the requested work, the outside vendor sent an invoice referencing the Purchase Order number to the UIC payment office for payment. Upon receipt of a vendor's invoice referencing the appropriate Purchase Order, UIC's payment system automatically generated a payment to the vendor.

¹⁴ This withdrawal is reflected on the bank statement for Mr. Hernandez's joint account; the OEIG did not obtain the withdrawal slip for this transaction.

2. Interview of [Employee 1]

On April 5, 2016, investigators interviewed UIC [Employee 1]. [Employee 1] said that he had served in that role approximately seven or eight years, and that he had been employed at UIC since 1997. [Employee 1] said that he was Mr. Hernandez's direct supervisor.

[Employee 1] explained that 10 to 15 trade foremen, and five zone managers, report to him. He estimated that on a daily basis, he received 80 to 100 Purchase Requests from all the trade foremen who report to him. He said that he approved virtually all of the Purchase Requests. [Employee 1] stated that if an elevator maintenance Purchase Request was over \$10,000, he normally contacted Mr. Hernandez to ascertain the basis for the cost; however, most of the elevator Purchase Requests were below \$10,000.

[Employee 1] stated that he met Ms. Martin at a UIC Business Fair and that subsequently, Ms. Martin was persistent in contacting him to obtain UIC business. According to [Employee 1], he told Mr. Hernandez to hire Smart Elevators and evaluate whether Smart Elevators was a competent elevator repair company.

[Employee 1] said that he was never provided a Facilities budget by UIC. [Employee 1] said that he had little interaction with [Employee 3], [identifying information redacted]. [Employee 1] advised that he learned, prior to the OEIG interview, that for the past several years, Smart Elevators was paid over \$1 million per year by UIC. [Employee 1] said that since he was not provided a budget, financial reports, or the ability to track what was spent by trade groups or vendors, he had no idea what Smart Elevators or any other vendor was paid.

3. Interview of [Employee 3]

Investigators interviewed UIC [Employee 3] on April 12, 2016. [Employee 3] said that he had been [identifying information redacted] for three years, and that he had served in various financial positions at UIC for the past 15 years.

[Employee 3] stated that the Maintenance group is comprised of approximately 12 to 15 trades, none of which has an individual budget. According to [Employee 3], no one ever asked him for individual budgets for each trade, and his department did not have the staff to analyze data in detail. [Employee 3] stated that only overtime and outside vendor expenses were tracked for the trades under the system in place at that time. At the end of the year, [Employee 3] could move money from one account to another to make up for any shortfalls.

According to [Employee 3], Mr. Hernandez's choice to use an outside vendor as opposed to a UIC worker would have appeared normal. [Employee 3] stated that, to an extent, all of the UIC trade groups use outside vendors. [Employee 3] said that due to a shortage of UIC elevator mechanics and the specialized nature of elevator repairs, the elevator trade group utilized the most outside vendors.

[Employee 3] stated that the procurement systems were reliant upon the honesty of the employee who submitted the Work Order, in this case Mr. Hernandez. [Employee 3] stated that

the procurement method used to pay Smart Elevators over \$1 million per year, for several years, was not the proper method that should have been used. [Employee 3] stated that a more formal bidding-type contract vehicle should have been in place.

[Employee 3] stated that [Employee 1] was not provided with the UIC Facilities budget and [Employee 1] would not know the total amount of funds allocated to each trade group. [Employee 3] stated that no foremen or managers were informed of their budgets.

[Employee 3] described the lack of oversight of the Purchase Order to payment system, stating that under this system, once a Purchase Order was issued to the vendor, it virtually guaranteed the vendor would be paid. [Employee 3] said there was no system in place to determine if the work actually needed to be done, if the cost estimate for the work was correct, and lastly if the work was done properly or even done at all. [Employee 3] said the only safeguard was the belief that individuals in charge were honest and following proper procedure.

4. Interview of UIC's [Employee 4]

On April 12, 2016, investigators interviewed [Employee 4], UIC's [identifying information redacted]. [Employee 4] described his role as [identifying information redacted].

[Employee 4] told investigators that all trade foreman have the authority to hire any vendor, depending on the cost of the work. [Employee 4] stated that in the case of the elevator trade at UIC, Mr. Hernandez had the discretion to respond to a repair call with a UIC-employed in-house mechanic or an outside vendor, and Mr. Hernandez used outside vendors extensively.

[Employee 4] stated that from his conversations with [Employee 1], [Employee 1] approved basically all Purchase Requests he received. [Employee 4] said there was no initial verification that the work set out in a Work Order needed to be done. Similarly, according to [Employee 4], there was little follow-up on whether a Work Order was completed properly. [Employee 4] explained that under that system, there was no verification that work was performed and completed; once a vendor submitted an invoice referencing the Purchase Order, an ACH transfer or UIC check was issued to the vendor.

[Employee 4] added that Mr. Hernandez learned the flaws in the UIC system and took advantage of them. According to [Employee 4], UIC is putting new procedures in place to help correct the problems with the procurement of repair services including:

- UIC will be outsourcing elevator repair and maintenance services through a contract following a bid process;
- trade foremen and directors will become more knowledgeable of their budgets and trained in fiscal duties;
- the procurement system will be changed so that payments were no longer automatically generated upon submission of an invoice by a vendor; and

- there will be more managerial responsibility in the tracking of expenses.

E. OEIG Referral To The U.S. Attorney's Office

After uncovering the large payments made by Smart Elevators that were deposited into Mr. Hernandez's account, the OEIG met with U.S. Attorney's Office representatives and referred this case to them for prosecution on May 26, 2016. Based on the U.S. Attorney's request for the OEIG to suspend its investigation, the OEIG did not conduct any further investigative steps.¹⁵

Since that time, the OEIG learned that Smart Elevators recently submitted a bid on a contract to provide elevator repair services to UIC. The OEIG decided to issue this report at this time in order for UIC to be able to make an informed decision in its procurement process regarding Smart Elevators, rather than waiting until the U.S. Attorney's Office has concluded its case.

IV. ANALYSIS

A. Smart Elevators And Mr. Hernandez Operated A Kickback Scheme In Violation Of State Official Misconduct And Bribery Statutes

The evidence obtained in this investigation shows that Mr. Hernandez and Ms. Martin, on behalf of Smart Elevators, participated in a kickback scheme. Mr. Hernandez directed large amounts of UIC funds to Ms. Martin's company, Smart Elevators. Ms. Martin, in turn, kicked back payments to Mr. Hernandez in the form of Smart Elevators checks payable to Mr. Hernandez's daughter, [Daughter]. The checks were deposited into an account held jointly by Mr. Hernandez and [Daughter]. Mr. Hernandez used the funds from the account for his own purposes, including the payment of a boat loan.

A person¹⁶ commits bribery when:

- (a) With intent to influence the performance of any act related to the employment or function of any . . . public employee . . . he or she promises or tenders to that person any property or personal advantage which he or she is not authorized by law to accept; or

....

- (d) He or she receives, retains or agrees to accept any property or personal advantage which he or she is not authorized by law to accept knowing that the property or personal advantage was promised or tendered with intent to cause him or her to influence the performance of any act related to the employment or function of any . . . public employee¹⁷

¹⁵ Prior to the criminal referral, OEIG investigators attempted to interview Mr. Hernandez without success. The OEIG did not continue to pursue interviewing Mr. Hernandez based on the U.S. Attorney's Office request to suspend the OEIG's investigation.

¹⁶ The Criminal Code's definition of "person" includes corporations. See 720 ILCS 5/2-15.

¹⁷ 720 ILCS 5/33-1.

The evidence obtained in this investigation shows that Smart Elevators made payments to Mr. Hernandez, and he accepted those payments. At least ten large checks were signed by Ms. Martin and drawn on the Smart Elevators' bank accounts. Although the checks were payable to Mr. Hernandez's daughter, each one was deposited into a bank account of which Mr. Hernandez was a joint owner. Each deposit was made, in person, at a Chase branch in Illinois near Mr. Hernandez's address. In addition, documents of one deposit establish that Mr. Hernandez himself was the person who deposited the check; the deposit slip for Smart Elevators check #72010, deposited on January 9, 2015, was filled out in the name of Mr. Hernandez as the customer. From these facts, it is reasonable to conclude that Mr. Hernandez was the recipient of the Smart Elevators checks.

Mr. Hernandez withdrew funds from the joint account for his own purposes, further supporting the conclusion that the Smart Elevators payments were really directed to him. First, in the January 9, 2015 deposit, bank records show that he deposited a Smart Elevators check in the amount of \$6,600 and received \$600 in cash back. Second, Mr. Hernandez withdrew funds from the joint account at least three times: for a \$21,248 cashier's check payable to the IRS on behalf of [Daughter, different surname];¹⁸ for a \$4,920 cashier's check payable to Adler University; and for a \$19,308 withdrawal which funded a \$16,363 cashier's check payable to the IRS. Mr. Hernandez is shown as the remitter on the face of each of these cashier's checks. Finally, Mr. Hernandez withdrew \$16,313.94 from the joint account to fund a cashier's check in the same amount, which he used to pay off his boat loan.

In addition, the evidence shows that Smart Elevators paid Mr. Hernandez for the purpose of influencing his performance as the lead elevator mechanic at UIC, and he accepted the Smart Elevators checks in his official capacity for that purpose. As the lead elevator mechanic at UIC, Mr. Hernandez was a public employee. In that position, Mr. Hernandez had nearly unchecked authority to hire, and direct university funds to, the elevator repair and maintenance vendor of his choice. He had no other relationship with Smart Elevators, such as an owner or partner, which would cause Smart Elevators to make payments to him. During the existence of the kickback scheme, Smart Elevators' UIC annual business more than doubled: from \$767,332 in 2012 to \$1,608,727 in 2013, and increased further, to \$1,794,099, in 2014. From the evidence gathered in this investigation, it is reasonable to conclude that Mr. Hernandez's acceptance of the Smart Elevators payments drove his choice of Smart Elevators as a vendor and recipient of substantial amounts of university funds.

Finally, the lengths to which Mr. Hernandez and Ms. Martin went to conceal the scheme evidences that the Smart Elevators payments were made and accepted for an improper purpose. Ms. Martin made the checks payable to [Daughter], not Mr. Hernandez. Mr. Hernandez had an ordinary checking account at Credit Union One into which his UIC payroll was deposited and out of which he paid his ordinary expenses. He avoided using that account in connection with the scheme; rather, he utilized [Daughter's] college accounts to deposit the proceeds of the scheme. On March 23, 2013, Ms. Martin issued the first Smart Elevators check; that same month, Mr.

¹⁸ [Daughter, different surname] and [Daughter] appear to be the same person. The Social Security number shown on the cashier's check for [Daughter, different surname] matches the Social Security number shown on the Chase records for [Daughter].

Hernandez's name first appears on [Daughter's] account statement. Furthermore, [Daughter] stated that she had no knowledge of checks written to her from Smart Elevators. From these facts, it is reasonable to conclude that Mr. Hernandez exploited the joint accounts he held with [Daughter] in order to conceal the payments.

Based on the evidence, it is reasonable to conclude that Smart Elevators paid Mr. Hernandez; Mr. Hernandez accepted those payments in his official capacity; and Smart Elevators paid Mr. Hernandez for the purpose of influencing his performance of his public employment duties. Therefore, the allegation Mr. Hernandez committed bribery, by receiving money from Ms. Martin, on behalf of Smart Elevators, for the purpose of influencing the performance of his public duties as UIC Lead Elevator Mechanic, is **FOUNDED**.¹⁹ Furthermore, the allegation that Ms. Martin, on behalf of Smart Elevators, committed bribery, by paying Mr. Hernandez for the purpose of influencing the performance of his public duties as UIC Lead Elevator Mechanic, is **FOUNDED**.

Mr. Hernandez's conduct also constitutes official misconduct. A public employee commits official misconduct when "in his official capacity . . . he or she . . . knowingly accepts for the performance of any act a fee or reward which he knows is not authorized by law."²⁰ For all the reasons stated above, the allegation that Mr. Hernandez committed official misconduct by accepting Smart Elevators' payments for the purpose of influencing the performance of his duties as a public employee, is also **FOUNDED**.

B. Mr. Hernandez Violated The Gift Ban Provision Of The State Officials And Employees Ethics Act

The State Officials and Employees Ethics Act provides that "no officer, member, or State employee shall intentionally solicit or accept any gift from any prohibited source or in violation of any federal or State statute, rule, or regulation."²¹ A prohibited source is defined as any person or entity "who does business or seeks to do business" with a State agency.²² A gift includes any gratuity or loan.²³

Smart Elevators is a vendor that has provided services to UIC from at least 2011 through 2015. Therefore, the OEIG finds that Smart Elevators is a "prohibited source" as defined in the Ethics Act.

Beginning in March 2013, Ms. Martin began writing checks drawn on Smart Elevators' account paid to [Daughter], the daughter of Mr. Hernandez. These checks were in large, even-dollar amounts, ranging from \$6,000 to \$14,300, and deposited into Chase Bank joint accounts held by Mr. Hernandez and [Daughter]. Bank records narrowed the location of the deposit to branch locations including Mokena, Orland Park, or Tinley Park, Illinois, all of which are close to

¹⁹ The OEIG concludes that an allegation is "founded" when it has determined that there is reasonable cause to believe that a violation of law or policy has occurred, or that there has been fraud, waste, mismanagement, misconduct, nonfeasance, misfeasance, or malfeasance.

²⁰ 720 ILCS 5/33-3(a)(4).

²¹ 5 ILCS 430/10-10.

²² 5 ILCS 430/1-5.

²³ *Id.*

Mr. Hernandez's residence. This suggests that Mr. Hernandez was depositing the checks himself and not his daughter, who had a California address at the time. Additional evidence of his acceptance of money from Smart Elevators is the fact that one of these Smart Elevators check deposits, made on January 9, 2015, included a deposit ticket with a signature in the name of James Hernandez as the customer; \$600 of the \$6,600 was requested and provided in cash on the deposit.

Further evidence of his acceptance of this money was the fact that Mr. Hernandez had control over Smart Elevators checks deposited into the joint accounts, and he in fact used a portion of those funds. For example, Mr. Hernandez withdrew funds from the joint accounts at least three times: for a \$21,248 cashier's check payable to the IRS on behalf of [Daughter, different surname]; for a \$4,920 cashier's check payable to Adler University; and for a \$19,308 withdrawal which funded a \$16,363 cashier's check payable to the IRS. Mr. Hernandez is shown as the remitter on the face of each of these cashier's checks. Finally, Mr. Hernandez withdrew \$16,313.94 from a joint account to fund a cashier's check in the same amount, which he used to pay off his boat loan.

The OEIG found no evidence that [Daughter] was employed by Smart Elevators or was otherwise entitled to any payment from Smart Elevators. When asked in her OEIG interview, Ms. Martin said briefly that she knew Mr. Hernandez had children; however, Ms. Martin did not say anything about knowing or employing [Daughter]. Furthermore, [Daughter] told law enforcement that she never worked for Ms. Martin or knew checks from Smart Elevators had been deposited into the Chase accounts.

Taken as a whole, the evidence shows that Mr. Hernandez accepted at minimum \$83,530 and as much as \$199,430²⁴ between 2013 and 2015. Accordingly, the allegation that Mr. Hernandez accepted gifts from a prohibited source in violation of the Ethics Act is **FOUNDED**.²⁵

C. Ms. Martin Violated The Gift Ban Provision Of The State Officials And Employees Ethics Act

The Ethics Act also bars a "prohibited source" from "intentionally offer[ing] or mak[ing] a gift that violates this Section."²⁶ As discussed above, Ms. Martin is a "prohibited source."²⁷

For the reasons stated above, money from Ms. Martin, as President of Smart Elevators, went to Mr. Hernandez. Although the checks were written out to [Daughter], the checks were deposited into bank accounts jointly owned by Mr. Hernandez and his daughter. The deposits

²⁴ This amount includes the total amount of deposits (\$198,330) and the \$600 cash received at the time of the January 9, 2015 deposit.

²⁵ The OEIG further notes that Mr. Hernandez's acceptance of gifts also violated UIC policies and procedures. See UIC Policies and Procedures, Human Resources Employment Guidelines 310 "Gifts and Gratuities" (stating, "[e]mployees should not accept gifts and gratuities of any kind, whether merchandise, cash, or services. Particular discretion and caution should be exercised by employees who work in sensitive areas. This includes: those involved in the purchase of . . . services as well as those employees who have influence in the selection of types of . . . service or their vendors."); UIC Business and Financial Policies and Procedures Section 9 "Employee Gift Policy" (mirroring the Ethics Act gift ban).

²⁶ 5 ILCS 430/10-10.

²⁷ See 5 ILCS 430/1-5.

were made at a branch near Mr. Hernandez's home, and at least one of the checks was deposited in the name of Mr. Hernandez.

There is no indication that [Daughter] worked for Smart Elevators. At the time these checks were written, [Daughter] had a California address. In addition, when the OEIG interviewed Ms. Martin, she stated that she was aware that Mr. Hernandez had children, but never mentioned that she knew of [Daughter] or that in the span of almost two years she had written her checks in the amount of \$83,530 and possibly as much as \$199,430. Because Ms. Martin had no personal or business relationship with [Daughter], the money was obviously meant for Mr. Hernandez. Because there is sufficient evidence to conclude that Ms. Martin violated the Ethics Act by intentionally making gifts to Mr. Hernandez, the allegation is **FOUNDED**.

D. Mr. Hernandez Violated UIC's Conflict Of Interest Policy

According to University of Illinois policy,²⁸ employees "will not engage in activities that may influence University business or other decisions in ways that could lead to any form of personal gain or improper advantage for the employee, the employee's family, or others to the University's detriment."²⁹ The rule defines a family to include descendants.³⁰

Mr. Hernandez violated the Conflict of Interest Policy because he made business decisions that led to his, or at the very least his daughter's, financial gain. Mr. Hernandez had the sole discretion to choose Smart Elevators, rather than using other vendors or UIC mechanics, to provide elevator repair services. In fact, in 2013, based on Mr. Hernandez's choosing Smart Elevators and approving the invoices, Smart Elevators was paid approximately \$1.6 million by UIC, double what UIC paid Smart Elevators for repairs in 2012. This trend continued in 2014, when Smart Elevators was paid almost \$1.8 million by UIC.

At the same time that Smart Elevators' UIC business increased, Ms. Martin began writing Smart Elevators checks in the name of Mr. Hernandez's daughter for at least \$83,530 and possibly as much as \$199,430. This money was deposited into accounts that Mr. Hernandez had control of, deposits were made at banks near Mr. Hernandez's house, and Mr. Hernandez used at least some of this money. Regardless whether the money went directly to Mr. Hernandez, either he, or his daughter, received the personal gain from Mr. Hernandez's business decisions regarding elevator repair assignments at UIC.

Accordingly, the allegation that Mr. Hernandez violated the University of Illinois' Conflict of Interest Policy is **FOUNDED**.

V. FINDINGS AND RECOMMENDATIONS

As a result of its investigation, the OEIG finds that **THERE IS REASONABLE CAUSE TO ISSUE THE FOLLOWING FINDINGS:**

²⁸ UIC is one of three universities that are part of the University of Illinois System. See www.uillinois.edu/about.

²⁹ University of Illinois Policy and Rules 16.01.

³⁰ *Id.*

- **FOUNDED** – Suzy Martin, on behalf of Smart Elevators, committed bribery, in violation of 720 ILCS 5/33-1(a), when she tendered money to UIC Lead Elevator Mechanic James Hernandez, which he was not authorized by law to accept, with the intent of influencing Mr. Hernandez’s performance of his public employment duties.
- **FOUNDED** – James Hernandez committed bribery, in violation of 720 ILCS 5/33-1(d), when he received money from Ms. Martin, which he was not authorized by law to accept, knowing that the payment was tendered with the intent of influencing the performance of his duties as a public employee.
- **FOUNDED** – James Hernandez committed official misconduct, in violation of 720 ILCS 5/33-3(a)(4), when, in his official capacity as UIC Lead Elevator Mechanic, he knowingly accepted a fee or reward from Smart Elevators for directing UIC elevator repair and maintenance business to Smart Elevators.
- **FOUNDED** – James Hernandez accepted gifts from a prohibited source, Suzy Martin on behalf of Smart Elevators, in violation of the Ethics Act, 5 ILCS 430/10-10.
- **FOUNDED** – Suzy Martin, on behalf of Smart Elevators, a prohibited source, intentionally made gifts to UIC Lead Elevator Mechanic James Hernandez, in violation of the Ethics Act, 5 ILCS 430/10-10.
- **FOUNDED** – James Hernandez directed UIC elevator repair business to Smart Elevators for his personal gain and/or the gain of his daughter, in violation of the University of Illinois’ Conflict of Interest Policy.

The OEIG recommends that UIC terminate any existing contracts and work orders with Smart Elevators, and bar Smart Elevators, or any other business operated by Suzy Martin,³¹ from future UIC contracts or work. The OEIG further recommends that UIC not issue payment to Smart Elevators for any outstanding invoices, unless Smart Elevators provides clear documentation that it performed the work being billed.

The OEIG recommends that UIC not rehire James Hernandez in the future.

The OEIG also recommends that UIC institute an improved procurement system that ensures services and repairs are warranted and actually performed prior to payment by UIC. The OEIG agrees with the suggested procedures outlined by [Employee 4] and recommends that these be implemented expeditiously, if not already in place.

No further investigative action is needed and this case is considered closed.

Date: April 3, 2017

Office of Executive Inspector General
for the Agencies of the Illinois Governor
69 W. Washington Street, Ste. 3400
Chicago, IL 60602

³¹ Ms. Martin incorporated another elevator business, Sierra Elevator Design, in 2015.

By: **M. Katherine Fischer**
Assistant Inspector General

Thomas C. Moriarty #102
Special Investigator



Office of Executive Inspector General
for the Agencies of the Illinois Governor
www.inspectorgeneral.illinois.gov

OEIG RESPONSE FORM

Case Number: 15-02081

Return By: 20 Days of Receipt of Report

Please check the box that applies. (Please attach additional materials, as necessary.)

☒ We have implemented all of the OEIG recommendations. Please provide details as to actions taken:

See attached letter.

- ☐ We will implement all of the OEIG recommendations but will require additional time.
We will report to OEIG within _____ days from the original return date.
- ☐ We do not wish to implement any of the OEIG recommendations. Please provide details as to actions taken, if any, in response to OEIG recommendations:

Signature

University of Illinois, University
Print Agency and Job Title Ethics Officer

Donna S. McNeeley
Print Name

4/24/17
Date

UNIVERSITY OF ILLINOIS
URBANA-CHAMPAIGN • CHICAGO • SPRINGFIELD

University Ethics and Compliance Office
Human Resources Building, Room 20
One University Plaza, MS HRB 20
Springfield, Illinois 62703-5407



April 24, 2017

Office of Executive Inspector General
for the Agencies of the Illinois Governor
69 W Washington St, Suite 3400
Chicago, IL 60602

Re: Case Number 15-02081 – Final Report Response

Executive Inspector General Hickey,

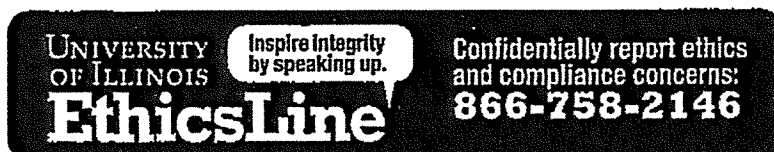
The University of Illinois is in receipt of the Final Report dated April 4, 2017, for Case Number 15-02081. Please accept the following as responses to the five recommendations included in the report.

Recommendation #1 – UIC has not utilized the services of Smart Elevators since March 4, 2016.

Recommendation #2 – As provided in Section 50-65 of the Illinois Procurement Code, and other applicable laws, the University is open to considering suspension/debarment of Smart Elevators (and any other business operated by Suzy Martin) from future UIC contracts or work. However, because of the ongoing confidential nature of this investigation by outside law enforcement agencies, and the fact that the suspension/debarment action would necessarily involve some type of notice to Smart Elevators (and possibly other outside parties), the University will defer any action on this recommendation until receiving notice that the investigation is concluded and its results are public.

Recommendation #3 - There are a large number of outstanding work orders that are difficult to validate whether the work was actually performed. Smart Elevator asserts that payment is due for this work. Examination of the validity of the invoices by UIC continues. UIC does not intend to pay those outstanding invoices that Smart Elevators claims are due and payable unless sufficient proof of completion of service is provided by the vendor.

Recommendation #4 – UIC does not intend to rehire Mr. Hernandez in any capacity.



E-mail: ethicsofficer@uillinois.edu

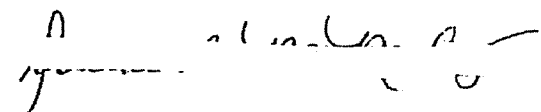
Recommendation #5 - In order to create additional oversight for hiring of new vendors, a vetting and approval process by UIC Facilities Management leadership has been implemented and has been in place since January 2017. The form and process has been shared with University Audits. The Vendor Add Approval Form is available for use on Facilities Management's home page: <http://www.fm.uic.edu/Home/default.aspx>.

Beginning in June 2017, all Facilities Management staff members who have authority to initiate purchases will participate in training sessions on University procurement rules and best practices. In addition, several other individuals will be granted authority to review and approve or deny purchases. Adding personnel to review purchases will result in more scrutiny of the procurement process.

We would like to thank your office for assistance during this review and for the coordination of effort between the University of Illinois and the Office of Executive Inspector General to resolve this matter.

If additional information is required, please contact me directly by phone or email at ethicsofficer@uillinois.edu.

Sincerely,



Donna S. McNeely
MBA, CPA, CIA, CIG, CFSA, CGAP
Executive Director of University Ethics and Compliance

Enclosure